

SOUTH AFRICA / JUDGMENT

Investec Bank Ltd v Clidet No. 808 (Pty) Ltd (35/LM/Apr08) [2008] ZACT 69 (4 September 2008) [2008] ZACT 69

COURT

Competition Tribunal

BEFORE

Y Carrim, D Lewis, N Manoim

CASE / FILE NUMBER

35/LM/Apr08

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case NO: 35/LM/Apr08

In the matter between

Investec Bank Ltd Primary Acquiring firm

And

Clidet No. 808 (Pty) Ltd Primary Target Firm

Panel : Y Carrim (Tribunal member); D Lewis (Tribunal member) and N Manoim (Tribunal member)

Heard on : 18 June 2008

Decided on : 18 June 2008

Reasons

Issued : 04 September 2008

Reasons for decision

Approval

- [1] On 18 June 2008 the Competition Tribunal issued a Merger Clearance Certificate approving a merger between Investec Bank Ltd and Clidet No. 808 (Pty) Ltd unconditionally. The reasons appear below.

Parties

- [2] The primary acquiring firm is Investec Bank Ltd (“Investec”), a public company listed on the JSE Securities Exchange. Investec is controlled by Investec Ltd (“Investec Ltd”).¹
- [3] The primary target firm is Clidet No. 808 (Pty) Ltd (“Clidet”). Clidet is a new company established under the company laws of the Republic of South Africa for the purpose of the instant transaction. Clidet is a wholly owned subsidiary of African Revival Holdings2 (Pty) Ltd (“African Revival”). African Revival is a wholly owned subsidiary of Dr. Maqetuka.³

Transaction

- [4] In terms of the structure of the transaction, Investec intends to acquire 30% shares with minority protection rights in Clidet. As a condition precedent to this acquisition and as a restructuring of certain investments held by Dr. Maqetuka in his personal capacity, African Revival, an entity solely controlled by Dr. Maqetuka, will acquire Dr. Matequka’s interests in the following firms: Innovative Sanitary Solution, Nsele, Vital Distribution, Siyahamba Engineering, Isitali Consortium, Mateqs, Zoza and Clidet 779.
- [5] Following this acquisition, Clidet will then acquire from African Revival an interest in the above firms according to the following proportions: Innovative Sanitary Solution (50%), Nsele (25%), Vital Distribution (15%), Siyahamba Engineering (36%), Isitali Consortium (10%), Mateqs (100%), Zoza (50%) and Clidet 779 (100%).⁴

Rationale

- [6] Investec submits that it sees Clidet’s BEE platform as a strength from which it would grow its investment exposure in the broader infrastructure sector and related industries such as transport, rail and power.
- [7] From Dr. Matequka’s perspective, the transaction will enable him to further develop his business interest in the infrastructure sector where a number of pipeline opportunities have arisen.

Parties Activities

- [8] The Investec group is an international, specialist banking group that provides a diverse range of financial products and services to a niche client base. Investec’s principal business is divided into investment banking, treasury and specialised finance, private client banking, portfolio management and stock broking as well as asset management.
- [9] Clidet is an investment holding company which does not offer products or services. It holds interests in firms involved in plumbing,

telecommunications, steel merchant, steel scaffolding and engineering.

Competition analyses

[10] There is no overlap between the activities of the merging parties as Investec is not active in the sectors in which Clidet has investments.

Public interest

[11] The transaction does not give rise to any public interest issues and is accordingly approved without conditions.

04 September 2008

Y Carrim Date

Tribunal Member

Concurring: D Lewis and N Manoim

Tribunal Researcher : I Selaledi

For the merging parties : Cliffe Dekker Inc.

For the Commission : Thabelo Ravhugoni (Mergers & Acquisitions)

1 Investec Ltd's primary South African subsidiaries are Investec Group Data, Investec Management Holdings (Pty) Ltd, Investec

Property Group Holdings Ltd, Investec Assurance Ltd, Investec Employee Benefits Holdings (Pty) Ltd and Fedsure International Ltd.

2 African Revival has non-controlling interest in the following firms: Siyahamba Engineering, Venus Railway Solutions, Mitsui & Co African Revival Solutions and African Revival Consortium.

3 Dr. Maqetuka has interests in the following firms: Innovative Sanitary Solutions (50%), Nsele Trading (25%), Vital distribution Solutions (15%), Africa Revival (100%), Maqeks Investments (100%), Zoza Investment Company (50%), Kulungile Metals (2.5%) and Clidet 779 (100%).

4 The parties submit that while Clidet will have 100% share in Clidet 779, the voting rights in Clidet 779 will be ceded to African Revival.

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